

BC EST #D097/99

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

542015 B.C. Ltd. also known as Perry Rink Construction
("employer")

of a Determination issued by

The Director of Employment Standards

(the "Director")

ADJUDICATOR: Paul E. Love

FILE NO.: 98/760

DATE OF DECISION: March 30, 1999

DECISION

OVERVIEW

This is an appeal by the employer, of a Determination which found that the employer failed to provide records to the Delegate, and fixed a penalty of \$500.00.

ISSUE TO BE DECIDED

Is there any basis for disturbing the findings of the Delegate?

FACTS

The employee, Joseph Boudreau, submitted to the Director's Delegate a record of hours worked, and a record of payments made, demonstrating to the Delegate that he was employed by the employer from April 21, to September 26, 1997.

The employee, Joseph Boudreau made a complaint to the Director that he was not paid wages for the period August 29, 1997 to September 27, 1997. The Director's Delegate made a Demand for Records, pursuant to section 85(1)(f) of the Employment Standards Act to Perry Rink Constructors (1995) Ltd. There was proof of delivery by way of a Canada Post acknowledgment. The Delegate made the demand to 1995 Ltd. because this was the proper legal name which was disclosed by a search of the companies registry.

Perry Rink, responded to the demand and provided a record of hours worked by Mr. Boudreau and identified the proper name of the employer as 542015 BC Ltd. I quote from the Determination:

On March 27, 1998, Perry Rink returned to the Employment Standards Office with copies of pay stubs, but refused to provide them to the officer. He said that he had received legal advice that the complaint was too late and also showed the wrong name, therefore the branch did not have jurisdiction to investigate. During the conversation Perry Rink removed the record of hours worked that he had provided the previous day and left the office.

Inspection of the records was relevant to our investigation under the Act.

Since the officer could not contact the employer by telephone, a final request, dated October 6, 1998, was sent to the employer (copy and acknowledgment attached). The employer did not respond to this letter.

ANALYSIS

BC EST #D097/99

The Director's delegate was not able to review records, in the possession of the Defendant which were clearly germane to the issues under investigation. No reasonable explanation was given by the employer for the non-production of the records. The failure to provide records impedes the ability of the Delegate to investigate and the scheme of the Act, which is to provide fair and efficient procedures for resolving disputes. The employer has demonstrated no reason why the penalty determination should be varied or canceled.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination made November 9, 1998 is confirmed.

Paul E. Love
Adjudicator
Employment Standards Tribunal